

ORIGINAL OPEN MEETING ITEM



COMMISSIONERS  
JEFF HATCH-MILLER - Chairman  
WILLIAM A. MUNDELL  
MIKE GLEASON  
KRISTIN K. MAYES  
GARY PIERCE



RECEIVED Executive Director

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ARIZONA CORPORATION COMMISSION

2007 MAR -5 P 1:45

AZ CORP COMMISSION  
DOCUMENT CONTROL

DATE: MARCH 5, 2007

DOCKET NO: W-03880A-06-0299 ET AL.

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Yvette B. Kinsey The recommendation has been filed in the form of an Opinion and Order on:

JNJ ENTERPRISES dba CHRISTOPHER CREEK HAVEN WATER COMPANY  
(SALE OF ASSETS AND TRANSFER OF CC&N)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

MARCH 15, 2007

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

TO BE DETERMINED

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

Arizona Corporation Commission

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BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 MIKE GLEASON, Chairman  
4 WILLIAM A. MUNDELL  
5 JEFF HATCH-MILLER  
6 KRISTIN K. MAYES  
7 GARY PIERCE

8 IN THE MATTER OF JNJ ENTERPRISES, DBA  
9 CHRISTOPHER CREEK HAVEN WATER  
COMPANY FOR APPROVAL OF THE SALE OF  
ITS ASSETS AND TRANSFER OF ITS  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY TO UTILITY SYSTEMS, LLC.

DOCKET NO. W-03880A-06-0299  
DOCKET NO. W-20459A-06-0299

DECISION NO. \_\_\_\_\_

**OPINION AND ORDER**

10 DATE OF HEARING: February 7, 2007

11 PLACE OF HEARING: Phoenix, Arizona

12 ADMINISTRATIVE LAW JUDGE: Yvette B. Kinsey

13 APPEARANCES: Mr. Gerald Lenzion, on behalf of JNJ Enterprises, dba  
14 Christopher Creek Haven Water Company;

15 Mr. Jeffery Daniels, on behalf of Utility Systems, LLC;  
16 and

17 Ms. Robin Mitchell, Staff Attorney, Legal Division, on  
18 behalf of the Utilities Division of the Arizona  
Corporation Commission.

**BY THE COMMISSION:**

19 On May 1, 2006, JNJ Enterprises dba Christopher Creek Haven Water Company  
20 ("Christopher Creek"), and Utility Systems, LLC ("Utility Systems") (collectively, "Applicants"),  
21 filed with the Arizona Corporation Commission ("Commission") an application to transfer  
22 Christopher Creek's Certificate of Convenience and Necessity ("CC&N") to Utility Systems and for  
23 approval of the sale of Christopher Creek's assets to Utility Systems.

24 On June 1, 2006, the Commission's Utilities Division Staff ("Staff") filed a letter informing  
25 Applicants that the application was insufficient.

26 On October 20, 2006, Staff filed a Sufficiency Letter in this docket indicating that the  
27 application met the sufficiency requirements as outlined in the Arizona Administrative Code.

28 Pursuant to the Procedural Order, Applicants provided notice of the application in the *Payson*

1 *Roundup*, a newspaper of general circulation in the affected service area, on November 17, 2006.

2 By Procedural Order, a hearing on the application was scheduled to convene February 7,  
3 2007.

4 On January 8, 2007, Staff filed its Staff Report on the application, recommending approval of  
5 the transfer of CC&N and sale of assets subject to certain conditions.

6 On February 7, 2007, a full public hearing was convened before a duly authorized  
7 Administrative Law Judge of the Commission. Mr. Gerald Lenzion appeared on behalf of  
8 Christopher Creek, and Mr. Jeff Daniels appeared on behalf of Utility Systems and both presented  
9 testimony. Staff appeared through counsel and presented testimony and evidence. No parties  
10 appeared to present public comment. At the conclusion of the hearing, the matter was taken under  
11 advisement pending submission of a Recommended Opinion and Order to the Commission.

12 \* \* \* \* \*

13 Having considered the entire record herein and being fully advised in the premises, the  
14 Commission finds, concludes, and orders that:

15 **FINDINGS OF FACT**

16 1. On May 11, 2006, Christopher Creek and Utility Systems jointly filed an application  
17 with the Commission to sell the assets of Christopher Creek and to transfer its CC&N to Utility  
18 Systems. The owner of Christopher Creek, Mr. Lenzion<sup>1</sup>, stated he wished to sell the utility "for  
19 personal reasons."

20 2. Christopher Creek is public service corporation in good standing with the  
21 Commission. Christopher Creek initially received its CC&N in Commission Decision No. 50184  
22 (August 20, 1979).

23 3. Christopher Creek provides water utility service to a one forth quarter square mile  
24 section of land located approximately 20 miles east of Payson, Arizona in Gila County, and serves  
25 approximately 166 customers. The service area is located in portions of Sections 19, 20, 29 and 30 in  
26 Township 11 North Range 13 East in Gila County, Arizona.

27 \_\_\_\_\_  
28 <sup>1</sup> Mr. Lenzion also owns Gardner Water Company, which is located approximately 10 miles from Christopher Creek and is the subject of another pending docket, requesting the sale of assets and transfer of its CC&N to Utility Systems.

1           4.       According to Staff's Report, Mr. Lenzion does not live full-time in the Payson area  
2 and is in the process of selling both Christopher Creek and Gardner Water Company ("Gardner") to  
3 Utility Systems.

4           5.       According to Staff's Report, Mr. Jeffery Daniels, of Utility Systems and the current  
5 on site manager for Christopher Creek, is a full-time resident of Payson and is better able to respond  
6 to problems with the system more quickly than the current owner.

7           6.       According to Staff's Report, the purchase agreement for both Christopher Creek and  
8 Gardner shows a purchase price of \$280,000, with \$220,000 being carried by the current owner.  
9 Additionally, the contract states Mr. Lenzion will stay on for -year as a consultant at no cost to the  
10 buyer.

11          7.       At hearing, Mr. Lenzion indicated that considerable resources have been expended to  
12 correct water pressure issues related to the Christopher Creek system.

13          8.       In its Staff Report, Staff noted that the combined 2005 annual report filed for both  
14 Christopher Creek and Gardner had some discrepancies. Staff stated that for the combined  
15 companies the unaudited balance sheet showed total assets of \$259,363 and liabilities and capital of  
16 \$155,942, which led Staff to conclude that because the companies' assets do not equal its liabilities,  
17 that the companies have not been following the National Association of Regulatory Commissioners  
18 Uniform System of Accounts ("NARUC") as required by A.A.C. R14-2-411.D.2.

19          9.       According to Staff's Report, the combined annual report for 2005 for Christopher  
20 Creek and Gardner showed net plant of \$251,746, zero customer deposits and zero advances in aid of  
21 construction. Further, Staff noted long term debt of \$108,384, which consisted of \$106,384 for the  
22 purchase of both water utilities and \$2,000 owed to Mr. Lenzion for operating costs. Additionally,  
23 Staff stated that the principle and interest on loans related to the two utilities amounts to \$17,400  
24 annually and combined losses equaled \$56,388 in 2004 and \$29,824 in 2005.

25          10.       Staff's Report further noted that the combined annual report for 2005 did not contain  
26 the cancelled checks showing that property taxes had been paid for the utilities. At hearing, Mr.  
27 Lenzion testified that the documentation relating to the payment of the 2005 taxes had been  
28 submitted to Staff prior to the hearing.

1        11. At hearing, Staff's witness confirmed that Christopher Creek had provided the  
2 necessary documentation to Staff regarding the property taxes, and therefore Christopher Creek had  
3 satisfied the compliance item.

4        12. Staff concluded that the inaccurate accounting methods and the large losses for  
5 Christopher Creek could jeopardize Christopher Creek's overall financial health as well as its  
6 continued ability to provide adequate service to its customers.

7        13. Therefore, Staff recommends that Christopher Creek file a rate case by March 31,  
8 2008, using a 2007 test year and that Christopher Creek maintain its books and records in accordance  
9 with the NARUC standards.

10 **Water System**

11        14. According to Staff's Report, the Christopher Creek system consists of four wells with  
12 a total production of 81 gallons per minute ("gpm"), five storage tanks with a storage capacity of  
13 45,000 gallons and a distribution system serving 166 connections.

14        15. Staff concluded the Christopher Creek system has adequate production and storage  
15 capacity to serve its existing base of customers and for future growth.

16        16. According to Staff's Engineering Report, the Christopher Creek system is within  
17 acceptable limits for water loss, which was calculated to be four percent.

18        17. The Arizona Department of Environmental Quality ("ADEQ") has determined that the  
19 Christopher Creek system is currently delivering water that meets water quality standards as required  
20 by the Arizona Administrative Code.

21        18. Staff found no ADEQ monitoring or reporting deficiencies for Christopher Creek;  
22 however, Staff noted that an ADEQ Drinking Water Compliance Status Report dated October 24,  
23 2006, showed discrepancies in the well identification data submitted with certain tests and ADEQ  
24 requested Christopher Creek to file documentation showing the correct well identification data.

25        19. Staff recommends Christopher Creek file with Docket Control, as a compliance item  
26 in this Docket, documentation demonstrating the Christopher Creek system (ADEQ Identification  
27 No. PWS ID #04-005) is in full compliance with ADEQ requirements within 60 days of the effective  
28 date of an Order in this matter.

1           20.     According to Staff's Report, Christopher Creek is not in an Arizona Department of  
2 Water Resources ("ADWR") Active Management Area, and is not required to comply with ADWR  
3 monitoring and reporting requirements.

4           21.     On January 23, 2006, the U.S. Environmental Protection Agency ("EPA") reduced the  
5 arsenic maximum containment level ("MCL") from 50 parts per billion ("ppb") to 10 ppb.  
6 According to Staff's Report, the Christopher Creek system is delivering water below the new  
7 maximum arsenic standard.

8           22.     The Commission's Utilities Division found no compliance delinquencies for  
9 Christopher Creek.

10          23.     Staff recommends approval of the transfer of CC&N and sale of assets for  
11 Christopher Creek to Utility Systems, LLC, subject to the following conditions:

- 12                 1.     That Christopher Creek file a rate case by March 31, 2008, using a 2007 test  
13                         year.
- 14                 2.     That Christopher Creek maintain its books and records in accordance with the  
15                         NARUC systems of accounts.
- 16                 3.     That Christopher Creek file with Docket Control, as a compliance item in this  
17                         docket, documentation demonstrating that the water system (PWS ID # 04-  
18                         005) is in full compliance with ADEQ requirements within 60 days of the  
19                         effective date of the an Order in this matter.

20          24.     Staff further recommends that if Christopher Creek fails to comply with the above  
21 stated timeframes the Decision granting the transfer and sale of assets should be considered null and  
22 void after due process.

23          25.     Staff's recommendations, as set forth above, are reasonable.

24          26.     Because an allowance for the property tax expense is included in Christopher Creek  
25 and Utility Systems' rates and will be collected from its customers, the Commission seeks assurances  
26 from Christopher Creek and Utility Systems that any taxes collected from ratepayers have been  
27 remitted to the appropriate taxing authority. It has come to the Commission's attention that a number  
28 of water companies have been unwilling or unable to fulfill their obligation to pay the taxes that were

1 collected from ratepayers, some for as many as twenty years. It is reasonable, therefore, that as a  
2 preventive measure Christopher Creek and Utility Systems shall annually file, as part of its annual  
3 report, an affidavit with the Utilities Division attesting that the company is current in paying its  
4 property taxes in Arizona.

5 **CONCLUSIONS OF LAW**

6 1. Christopher Creek is a public service corporation within the meaning of Article XV of  
7 the Arizona Constitution and A.R.S. § 40-281, 40-282 and 40-285.

8 2. The Commission has jurisdiction over Christopher Creek and the subject matter of  
9 this application.

10 3. Notice of the application was provided in accordance with the law.

11 4. There is a public need and necessity for water service in the service territory.

12 5. Subject to compliance with the above stated conditions, Utility Systems is a fit and  
13 proper entity to receive Christopher Creek's CC&N.

14 6. Approval of the sale of Christopher Creek's assets and the transfer of its CC&N to  
15 Utility Systems is in the public interest.

16 7. The sale and transfer application should be granted subject to the conditions set forth  
17 above.

18 **ORDER**

19 IT IS THEREFORE ORDERED that the application of JNJ Enterprises dba Christopher  
20 Creek Haven Water Company for approval of the sale of its assets and the transfer of its CC&N to  
21 Utility Systems, LLC is hereby approved, conditioned on JNJ Enterprises dba Christopher Creek  
22 Haven Water Company's compliance with the following ordering paragraphs.

23 IT IS FURTHER ORDERED that JNJ Enterprises dba Christopher Creek Haven Water  
24 Company shall file a rate case with the Arizona Corporation Commission by March 31, 2008, using a  
25 2007 test year.

26 IT IS FURTHER ORDERED that JNJ Enterprises dba Christopher Creek Haven Water  
27 Company shall maintain its books and records in accordance with the National Association of  
28 Regulatory Commissioners Uniform System of Accounts.

1 IT IS FURTHER ORDERED that JNJ Enterprises dba Christopher Creek Haven Water  
2 Company shall file with Docket Control, within 60 days of the effective date of this Order, as a  
3 compliance item in this docket, documentation demonstrating that the Christopher Creek Haven  
4 Water Company system (PWS ID # 04-005) is in full compliance with Arizona Department of  
5 Environmental Quality requirements.

6 IT IS FURTHER ORDERED that that if JNJ Enterprises dba Christopher Creek Haven Water  
7 Company fails to comply with the above stated conditions within the required time-frames the  
8 Certificate of Convenience and Necessity conditionally granted herein shall become null and void,  
9 after due process.

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1 IT IS FURTHER ORDERED that JNJ Enterprises dba Christopher Creek Haven Water  
2 Company and Utility Systems, LLC shall annually file as part of its annual report, an affidavit with  
3 the Utilities Division attesting that it is current on paying its property taxes in Arizona.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

6  
7  
8 CHAIRMAN

COMMISSIONER

9  
10 COMMISSIONER

COMMISSIONER

COMMISSIONER

11  
12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
13 Director of the Arizona Corporation Commission, have  
14 hereunto set my hand and caused the official seal of the  
Commission to be affixed at the Capitol, in the City of Phoenix,  
this \_\_\_\_ day of \_\_\_\_\_, 2007.

15  
16 BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

17  
18 DISSENT \_\_\_\_\_

19  
20 DISSENT \_\_\_\_\_

1 SERVICE LIST FOR: CHRISTOPHER CREEK HAVEN WATER  
2 COMPANY and UTILITY SYSTEMS, LLC  
3 DOCKET NOS.: W-03880A-06-0299 and W-20459A-06-0299  
4 Gerald Lenzion  
5 CHRISTOPHER CREEK HAVEN WATER COMPANY  
6 2303 E. Heatherbrae Drive  
7 Phoenix, AZ 85016  
8 Jeffery Daniels  
9 UTILITY SYSTEMS, LLC  
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11 Payson, AZ 85541  
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13 Robin Mitchell, Staff Attorney  
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18 Ernest G. Johnson, Director  
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